

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

NEOMEDIA TECHNOLOGIES, INC.,

Plaintiff,

v.

Judge

CONAIR CORP.,

**Jury Trial Demand**

Defendant.

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**COMPLAINT**

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Plaintiff NeoMedia Technologies, Inc. for its Complaint for patent infringement against Defendant Conair Corp., alleges as follows:

**PARTIES**

1. Plaintiff NeoMedia Technologies, Inc. (“NeoMedia”) is a Delaware corporation with its principal place of business at 100 West Arapahoe Avenue, Suite 9, Boulder, Colorado 80302.

2. NeoMedia is the owner of record and assignee of US Patent No. 6,199,048 (“the ‘048 Patent”) and US Patent 8,131,597 (“the ‘597 Patent”) (collectively, the “Asserted Patents”). NeoMedia has and has had the exclusive right to enforce and collect damages for infringement of the Asserted Patents during all relevant time periods.

3. On information and belief, Defendant Conair Corp. (“Conair”) is organized and existing under the laws of the State of Connecticut, having its headquarters at One Cummings Point Road, Stamford, CT 06902.

## **JURISDICTION AND VENUE**

4. This is a civil action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, and more particularly 35 U.S.C. § 271.

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

6. Personal jurisdiction over the defendant is proper under C.R.S. § 13-1-124 and the United States Constitution because this action arises from the Defendant's commission of at least (a) transacting business and (b) committing the complained of tortious acts within this jurisdiction.

7. Venue is proper in this District under 28 U.S.C. §§ 1391 (b) and (c) and 1400 (b).

## **BACKGROUND**

8. NeoMedia is a leader in 2-dimensional ("2D") barcode technology and infrastructure solutions. NeoMedia's platform technology enables consumers easy and quick access to information by scanning mobile barcodes with camera phones.

9. NeoMedia provides a barcode scanner application, the NeoReader, which allows users to scan multiple types of 1-Dimensional ("1D"), such as Uniform Product Codes ("UPC") and 2D barcodes, such as Quick-Response Codes ("QR Codes").

10. NeoMedia's mobile barcode technology and platform has been used by brands to power their respective mobile barcode campaigns.

## **THE PATENTS-IN-SUIT**

11. On March 6, 2001, the ‘048 Patent, entitled “System and Method for Automatic Access of a Remote Computer Over a Network” was duly and legally issued by the United States Patent and Trademark Office (“the USPTO”).

12. The claims of the ‘048 Patent were subjected to two ex parte reexaminations before the USPTO. The first reexamination was instituted on July 26, 2007 (“the 2007 Reexamination”), and concluded on June 9, 2009, when the USPTO issued an Ex Parte Reexamination Certificate (6867<sup>th</sup>). The second reexamination was instituted on September 20, 2010 (“the 2010 Reexamination”), and concluded on September 6, 2011, with the USPTO issued an Ex Parte Reexamination Certificate (8519<sup>th</sup>). A true and correct copy of the ‘048 Patent, and its two Ex Parte Reexamination Certificates is attached as Exhibit A.

13. On March 6, 2012, the ‘597 Patent, entitled “System and Method for Using an Ordinary Article of Commerce to Access a Remote Computer” was duly and legally issued by the USPTO. A true and correct copy of the ‘597 Patent is attached as Exhibit B.

14. The ‘048 patent has been asserted in several previous patent infringement lawsuits, each of which resolved by default judgment in favor of NeoMedia or by the accused defendants agreeing to enter license agreements with NeoMedia. These previous actions include: NeoMedia Technologies, Inc. v. Virgin, Inc. et al, Case No. 04 CV 00021, (N.D. Ill.); NeoMedia Technologies, Inc. v. LScan, Inc., Case No. 04 CV 2307 (E.D. Pa.); NeoMedia Technologies, Inc. v. AirClic, Inc., Case No. 04 CV 1692 (E.D.

Pa.), and NeoMedia Technologies, Inc. v. SpyderLynk, LLC, Case No. 12 CV 00939 (D. Co.).

15. NeoMedia has licensed the Asserted Patents to several providers of QR code services.

16. In addition to the licenses discussed above, NeoMedia has licensed its valuable intellectual property, including the '048 and '597 patents, to other companies including Kraft Foods, Microsoft, Progressive Insurance, and Mondelez Global LLC.

### **THE DEFENDANT CONAIR**

17. According to its website, Defendant Conair indicates that, since its founding in 1959, “the company has become a leading manufacturer of nationally branded personal and health care small appliances,” and that “divisions of Conair are among the most recognized and respected brands in small kitchen appliances and cookware.”

18. On information and belief, Defendant Conair implements its marketing strategies at least by publishing or causing to be published advertisements featuring QR Codes in order to capitalize in the form of added value to its brand.

### **CONAIR’S AWARENESS OF THE ASSERTED PATENTS**

19. Conair has been expressly aware of the '048 Patent no later than November 6, 2012, when NeoMedia, through its counsel, notified the in house counsel for Conair of the '048 Patent and offered Conair the opportunity to license the patent.

20. Conair has been expressly aware of the '597 Patent no later than November 6, 2012, when NeoMedia, through its counsel, notified the in house counsel for Conair of the '597 Patent and offered Conair the opportunity to license the patent.

21. Additional correspondence and communications have been taken place among the parties, but Conair has never agreed to take a license and has never demonstrated why it believes a license is not necessary.

#### **FACTS REGARDING CONAIR'S INFRINGEMENT**

22. Conair's QR Code advertisements and/or product packaging are examples of machine-readable codes that enable a user device to connect with a content server over the Internet by scanning a machine-readable code encoded with an index that is sent to a server and used to lookup the URL of the content server, which is then returned to the user device to enable it to connect with the content server.

23. As one example, the following QR code enables a user device to communicate the index to the server "http://ez2.com/" to obtain the URL "http://webapps.easy2.com/cm\_net/generic\_mobile\_index.aspx?page\_id=36229109&referrer=qt ag" of the content server.



24. Conair does cause and has caused advertisements and/or product packaging to be published to the general public intending to strengthen the value of its brand, featuring at least one QR Code.

25. Conair publishes and has published these advertisements and/or product packaging on behalf of its brand in order to instruct users to scan the QR Code provided by Conair with a free barcode reader.

#### **ALLEGATIONS RELATING TO WILLFUL INFRINGEMENT**

26. Defendant Conair has been aware of the '048 Patent since at least as early as November 6, 2012, when NeoMedia sent Conair a letter offering to license NeoMedia's patent portfolio.

27. Defendant Conair has been aware of the '597 Patent since at least as early as November 6, 2012, when NeoMedia sent Conair a letter offering to license NeoMedia's patent portfolio.

28. Despite specific knowledge of the claims of the Asserted Patents, Conair was objectively reckless in continuing to engage in actions that indirectly infringe the Asserted Patents. Conair knew or should have known that there was an objectively high likelihood that its actions constituted infringement of a valid patent.

#### **COUNT I: INFRINGEMENT OF THE '048 PATENT**

29. NeoMedia incorporates by reference the allegations set forth in paragraphs 1 through 28 of this Complaint as though set forth fully herein.

30. To the extent that Conair has sponsored QR campaigns with any provider not licensed by NeoMedia, by making, using, selling, or offering for sale in this judicial district and elsewhere in the United States, without authorization or license from NeoMedia, QR Codes that are covered by one or more claims of the '048 patent, Defendant Conair has been and is currently infringing the '048 Patent by inducement and/or contributorily in violation of 35 U.S.C. §271(b), and/or (c).

31. Conair, through previous correspondence from NeoMedia, and based upon this Complaint, is actually aware of the '048 patent and what acts constitute infringing conduct.

32. With this knowledge, Conair has intentionally taken active steps to cause, urge, encourage, or aid others' direct infringement of the '048 Patent with knowledge of that infringement, such as by advertising and distributing the Conair QR Codes, including instructions on how to use the QR Codes, by which Conair specifically intended to cause, urge, encourage, or aid others to directly infringe the '048 Patent.

33. These active steps caused, urged, encouraged, or aided others to use Conair's QR Codes in a manner that employs and/or embodies the claims of the '048 Patent by meeting each and every element of one or more of the claims, including putting the invention into service, i.e., controlling the system as a whole and obtaining benefit from it.

34. By making and/or using QR codes that indirectly link to a webserver, Conair is making and/or using QR codes that are material to practicing the '048 Patent's invention.

35. Conair QR codes that indirectly link to a webserver are especially made or especially adapted to indirectly link to a webserver.

36. Conair QR codes that indirectly link to a webserver have no substantial non-infringing uses.

37. By making and/or using the QR codes that indirectly link to a webserver, Conair specifically intended its customers to infringe the '048 Patent and knew that the customers' acts constituted infringement.

38. On information and belief, Conair's conduct is willful and deliberate.

39. As a direct and proximate result of Conair's acts of patent infringement, NeoMedia has been and continues to be injured, and has sustained and will continue to sustain substantial damages in an amount not yet determined.

40. In addition, NeoMedia has and will continue to suffer irreparable harm as a direct and proximate result of Conair's acts of patent infringement.

## **COUNT II: INFRINGEMENT OF THE '597 PATENT**

41. NeoMedia incorporates by reference the allegations set forth in paragraphs 1 through 28 and 30 through 40 of this Complaint as though set forth fully herein.

42. To the extent that Conair has sponsored QR campaigns with any provider not licensed by NeoMedia, by making, using, selling, or offering for sale in this judicial district and elsewhere in the United States, without authorization or license from NeoMedia, QR Codes that are covered by one or more claims of the '597 patent, Defendant Conair has been and is currently infringing the '597 Patent by inducement and/or contributorily in violation of 35 U.S.C. §271(b), and/or (c).

43. Conair, through previous correspondence from NeoMedia, and based upon this Complaint, is actually aware of the '597 patent and what acts constitute infringing conduct.

44. With this knowledge, Conair has intentionally taken active steps to cause, urge, encourage, or aid others' direct infringement of the '597 Patent with knowledge of that infringement, such as by advertising and distributing the Conair QR Codes, including instructions on how to use the QR Codes, by which Conair specifically intended to cause, urge, encourage, or aid others to directly infringe the '597 Patent.



45. These active steps caused, urged, encouraged, or aided others to use Conair's QR Codes in a manner that employs and/or embodies the claims of the '597 Patent by meeting each and every element of one or more of the claims of the '597 Patent, including putting the invention into service, i.e., controlling the system as a whole and obtaining benefit from it.

46. By making and/or using QR codes that indirectly link to a webserver, Conair is making and/or using QR codes that are material to practicing the '597 Patent's invention.

47. Conair's QR codes that indirectly link to a webserver are especially made or especially adapted to indirectly link to a webserver.

48. Conair's QR codes that indirectly link to a webserver have no substantial non-infringing uses.

49. By making and/or using the QR codes that indirectly link to a webserver, Conair specifically intended its customers to infringe the '597 Patent and knew that the customers' acts constituted infringement.

50. On information and belief, Conair's conduct is willful and deliberate.

51. As a direct and proximate result of Conair's acts of patent infringement, NeoMedia has been and continues to be injured, and has sustained and will continue to sustain substantial damages in an amount not yet determined.

52. In addition, NeoMedia has and will continue to suffer irreparable harm as a direct and proximate result of Conair's acts of patent infringement.

## **REQUEST FOR RELIEF**

WHEREFORE, NeoMedia requests that this Court enter judgment:

- A. Adjudging, finding and declaring that Conair has indirectly infringed (both via induced infringement and contributory infringement) the asserted claims of each of the Asserted Patents under 35 U.S.C. §271;
- B. Adjudging, finding and declaring that Conair's infringement is willful and deliberate;
- C. Ordering Conair to pay NeoMedia an amount that, as adequately as possible, compensates NeoMedia for Conair's infringement, in no event less than a one-time fully paid up reasonable royalty fee;
- D. Ordering Conair to pay court costs, pre-judgment interest, post-judgment interest, and attorneys' fees under 35 U.S.C. §§284 and 285;
- E. Finding that this is an "exceptional" case pursuant to 35 U.S.C. §285, and awarding enhanced damages up to and including treble the amount of damages and the payment of attorneys' fees; and
- F. Granting NeoMedia such other and further relief as is just and proper, or as the Court deems appropriate.

## **JURY DEMAND**

NeoMedia demands a trial by jury on all issues that may be so tried.

Dated: May 3, 2013

Respectfully submitted,

/s/ Alexander J. Debski

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